

Opinion No. 56-6382

February 6, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Jack E. Holmes, Director, New Mexico Legislative Council, Post Office Box 1651, Santa Fe, New Mexico

On January 26, 1956, you addressed an inquiry to this office concerning the interpretation of §§ 10-1-8--10-1-10, N.M.S.A., 1953. These statutes read as follows:

"§ 10-1-8. Public printing contracts--Duty to award to New Mexico firms. In the purchase of printing and printed supplies it shall be the duty of every board, commission, department, state institution, or the purchasing agent thereof, of the state of New Mexico, or any political unit, or any subdivision thereof, to award contract for such printing to a New Mexico firm or firms."

"§ 10-1-9. Calls for bids from New Mexico and out-of-state firms--Preference to former. In the purchase of printing or printed supplies not ordinarily obtainable from New Mexico firms it shall be permissible to call for bids from both New Mexico firms and nonresident firms; Provided, however, that in award of such contract New Mexico firms shall be given preference when the bid price shall not exceed the bid price of any nonresident competitor."

"§ 10-1-10. 'New Mexico firm' defined--Exceptions from act. --The term 'New Mexico firm' as used in this act (10-1-8 to 10-1-12) shall be construed to mean any person, or persons, firm, company or corporation authorized to do business under the laws of the state of New Mexico; Provided that the labor required to produce such printing shall be performed in a plant located in this state and which is under the control and management of such corporation, firm or association. Provided further, that this act shall not apply to contracts for printing the New Mexico Supreme Court reports, nor to any official compilation or codification of the laws of this state, nor to any printing, the out-of-state printing of which is first approved in writing by the state board of finance."

These three statutes are somewhat confusing. In regard to these statutes, you ask three specific questions. They will be answered in the order in which they are asked.

Question No. 1

Does the language in § 10-1-9 "printing or printed supplies not ordinarily obtainable from New Mexico firms" indicate that if the product or service is obtainable from any New Mexico firm that the state cannot obtain it from a nonresident firm? Does the written approval of the state board of finance alter the situation in this case?

Answer

A reading of § 10-1-9 with the section immediately preceding it indicates to us that § 10-1-8 applies to a situation where the printing or printing supplies can be manufactured by New Mexico firms. That is to say, that the job will not be required to be sublet by a New Mexico bidder to an out-of-state bidder. This section makes it a plain duty to give such bid to New Mexico firms.

§ 10-1-9, however, simply requires that a preference shall be given to New Mexico bidders if the contract for supplies must be sublet to a non-New Mexico firm. This, we feel, is the distinguishing factor between the two sections. When these two sections are read with § 10-1-10, it becomes apparent that the whole act, which is Ch. 168, Laws of 1937, is intended to give New Mexico suppliers, where the work is done in New Mexico, the absolute right to the bid and to give New Mexico brokers a preference in the event a bid is equal moneywise, or in the event the work of the New Mexico bidder will be superior to that of the out-of-state bidder. Both of these acts may be circumvented by application to and approval by the State Board of Finance.

Therefore, it is the opinion of this office that if a printing job can be done in New Mexico by use of equipment in New Mexico that the contract must be given to New Mexico bidders unless such contrary bid by out-of-state bidder is first approved by the State Board of Finance.

Question No. 2

Does the prior written approval by the State board of finance allow any state purchaser to purchase printing or printed supplies from either non-resident or resident firms on a low bid basis?

Answer

This reference is made to the whole act, which act includes §§ 10-1-8 and 10-1-9, therefore, it is the opinion of this office that the prior approval by the Board of Finance would permit acceptance of out-of-state bids regardless of whether or not such printing can be done in New Mexico.

Question No. 3

Does an offset or lithographic process qualify as printing?

Answer

We are cognizant of the Opinion of the Attorney General, No. 1733 dated August 9, 1937, which holds, in part, that lithographic process is not printing. With this Opinion, we disagree. The word "printing" is defined as the mechanical act of impressing legible characters on paper or other substances. The term has been held to include mimeographing and even typewriting. The word "lithographing" is defined as an inscription on metal or stone and producing an impression on a substance from that

metal or stone. We see no difference and have consulted with various people in the printing trade, who do not distinguish between printing and lithography and believe that the general term "printing" would include lithographic and offset processing.

Therefore, it is the opinion of this office that §§ 10-1-8--10-1-10, N.M.S.A., 1953 Comp., include any and all commercial printing regardless of the technical description used in the printing trade. Opinion No. 1733 is specifically overruled, so far as lithographing, embossing and off-set printing are concerned.

By Fred M. Standley

Assistant Attorney General